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November 25, 2003

The Honorable John D. Ashcroft
Attorney General
U.S. Department of Justice
900 Pennsylvania Ave, NW
Washington, DC 20530

Dear Mr. Attorney General:

We write to express our concerns about the overt political nature that the Section 5 "preclearance" process has taken under your tenure at the Department of Justice. Specifically, we ask that all political appointees recuse themselves from the review of the Texas congressional redistricting plan and that the matter be placed under the review of career employees at the Department.

From the outset, the Texas congressional redistricting process has been tainted by much more than the customary political rivalry accompanying decennial redistricting. After the approval of the court-drawn plan and the 2002 elections held thereunder, Texas Republican officials have employed unprecedented tactics to achieve partisan advantage, even attempting to exploit their ties to the Department in the process. As you may recall, your Office of Inspector General, in an August 2003 report, detailed the numerous high-level contacts made in an attempt to pressure the Department into tracking down Democratic legislators who were protesting the process in Austin and found that one FBI agent, acting in his official capacity, sought to determine the whereabouts of one state senator. **DOJ-OIG, Special Report, August 12, 2003 at 4-6 & 7-27.**

A similar report from the Department of Homeland Security Inspector General revealed that the Texas Department of Public Safety ("DPS") may be involved in covering up the identity of the individual or individuals who prompted the DPS to mislead the Department of Homeland Security into using its terrorism fighting resources for partisan purposes in the Texas redistricting dispute. **IN03-OIG-LA-0662, at 1-2.** While we have asked that you open an immediate investigation into this matter, you have yet to respond to the request.

The stakes involved in the Texas preclearance are without precedent and should be devoid of the barest hint of partisanship. The plan under review eliminates up to three effective minority opportunity districts and all seven minority influence districts. If enacted, this plan would have the devastating effect of diluting the voting strength of some 3.6 million Latinos and African-Americans across the state.

Section 5 of the Voting Rights Act was passed for the express purpose of ensuring that jurisdictions with a history of discrimination against minority voters would be subject to vigorous oversight by the Justice Department and guaranteeing that this terrible history would never be repeated. South Carolina v. Katzenbach, 383 U.S. 301, 327-28 (1966). With its authority over the approval of redistricting plans, it goes without saying the Voting Section should conduct its reviews and analyses with the utmost care and consideration, free of partisanship.

Sadly, it appears that the Section may have fallen subject to political pressures under your administration and minorities have paid the price. For example, in the Mississippi congressional redistricting preclearance review, the Department failed to act in a timely manner in response to a federal court deadline and failed to honor the state's request for expedited review. Though discretionary, a request for expedited review had been honored in several other instances, most notably Virginia and North Carolina. Then Assistant Attorney General for Civil Rights Ralph Boyd admitted that there were no substantive issues with the plan submitted by the state for preclearance. However, Mr. Boyd waited 50 days before requesting additional information to aid in the determination of whether the judicial process by which the plan was adopted was itself retrogressive under Section 5 of the Act.

These omissions, for the first time, allowed the Voting Rights Act to be used as a shield to block the protection of minority voting strength. It should be no wonder the justifications for delay raised the specter of politics infecting the Departments's review of the Mississippi plan. Moreover, the fact that the Department's handling of the Mississippi congressional plan ran contrary to the traditional approach taken in its review of other redistricting maps substantiates concerns that the Department's actions were driven by politics, and not by legitimate concerns for the Voting Rights Act.

Similar concerns already exist about the Department's handling of the Texas congressional redistricting plan. In August, the Voting Section reached the highly-questionable determination that the Texas State Senate could change its supermajority rule without waiting for Section 5 pre-clearance review. Under a long-standing tradition, the Texas Senate does not consider legislation without the consent of an extraordinary majority of Senate Members. For example, Anglo Republican Senators relied on this procedural principle to block the consideration of

Congressional and state legislative redistricting in the 77th Legislature in 2001 and to block consideration of Hate Crimes Legislation in the 75th Legislature in 1997.

Although on several occasions the Texas Senate has considered redistricting legislation without following its normal "blocker bill" (or "2/3rds rule") procedure, it has considered these bills either by unanimous consent (by definition, with consent of all Senators) or with the approval of a supermajority of Senators. The only time the Senate has ever broken with this tradition was during the Third Special Session this year, when a group led by minority lawmakers was able to gather the support of enough Senators to block consideration of redistricting legislation. Just like their Anglo Republican colleagues who had earlier used this supermajority principle to represent their constituents, these minority lawmakers were using established Senate procedures to represent the millions of minority Texans who opposed Congressional redistricting.

In allowing the Senate to consider the Republican plan with the consent of a simple majority of Senators, the Voting Section essentially permitted a "change affecting voting" that resulted in the in the dilution of minority voting strength. The change in process eliminated a tool that allowed minority representatives to utilize their influence in the political process, which would appear to be retrogressive under Section 5. Amazingly, the Department arrived at its decision before meeting with the effected minority state legislators or taking the time to actually understand the history of the use of the supermajority principle in the deliberations of the Texas State Senate. Following the precedent set by Mississippi, we would have thought that such a dramatic change in the process of adopting a plan would merit far greater scrutiny. Again, your Department's failure to conform to its own precedents raise the obvious concern that its decision was driven by politics, rather than concern for civil rights.

Prior to the retirement of James Turner as career Deputy Assistant Attorney General for Civil Rights, it had been the practice of the Department to place the Voting Section under the supervision of the career deputy assistant attorney general, rather than one of the more numerous political deputies. The prevailing logic was that prudence dictated that a non-political deputy should supervise the work of the Section due to the complexity of Section 5 analysis and the need to insulate the Department from any appearance of political partisanship. While this practice has broken down, we believe that its merit is amply demonstrated by the controversy created by the Civil Rights Division's actions in the Mississippi congressional redistricting and, thus far, in the Texas Section 5 matters. We strongly suggest that this practice be brought back to protect the integrity of the Section 5 process. Failure to do so, again, smacks of politics.

The current Assistant Attorney General for Civil Rights, Alex Acosta, has elected to recuse himself from review of the Texas congressional redistricting plan for undisclosed reasons. With his departure, the Civil Rights Division is left with no minorities whatsoever, from management to line attorney, participating in the Section 5 review of the Texas plan. Moreover,

his decision has left the Voting Section under the supervision of two unconfirmed political deputies, both of whom lack strong experience in the substantive law, and one of whom possesses serious political baggage that merits disqualification from supervision of this matter under Department conflict regulations. Again, we hope you can understand that the current scenario of unconfirmed political appointees making one of the most significant civil rights determinations since the enaction of the Voting Rights Act, given the history and context of the situation, raises serious concerns that your review will be politicized.

Conversely, the career deputy assistant attorney general, Loretta King, has ample experience in the area, having both supervised the Section in the past and served as a deputy chief for the Section prior to her promotion. We believe that the recusal of the political appointees from the process, and placing it in the hands of career officials with decades of experience in the substantive law, is the best way to protect the integrity of the Section 5 process and the Justice Department as a whole.

The Voting Rights Act and its protections should regarded as a sacred trust placed in the hands of the Department of Justice. However, from media accounts of congratulatory comments on the Texas redistricting plan's "righting some wrongs" attributed to the Vice President to the most recent Section 5 determinations, it seems clear that partisanship at the highest levels has compromised this important work of the Civil Rights Division. Therefore, we believe that you should take any appearance of improper political influence seriously and act quickly to restore confidence in the process by asking your political appointees to recuse themselves and place a career employee in charge of the matter.

We thank you for your immediate attention to this matter and look forward to meeting with you as soon as possible to discuss our proposal. Please contact me through the Judiciary Chief of Staff, Perry Apelbaum at 202-225-6504, fax 202-225-4423, 2142 Rayburn House Office Building, Washington, D.C. 20515.

Sincerely,

John Conyers, Jr.

Robert C. Scott

Sheila Jackson Lee

Martin T. Meehan

Maxine Waters

Zoe Lofgren

Adam B. Schiff

Anthony D. Weiner

Melvin L. Watt

Linda T. Sánchez

Robert Wexler

cc: The Honorable F. James Sensenbrenner, Jr.
Joe Rich, Chief, Voting Rights Section
Will Moscella, Assistant Attorney General, Legislative Affairs